IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3224 OF 2006

Rakesh @ Satish @ Lamboo Shankar Patil ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri Anjali Patil for the Applicant.

Shri Rajesh More, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 22, 2006.

P.C.:

1. Rule. The learned A.P.P. waives service for the Respondent. The Applicant is being prosecuted for offence punishable under section 376 of the Indian Penal Code. The P.W.4 (prosecutrix) was examined before the Trial Court. On the prayer made by the learned Public Prosecutor, certain question was permitted to asked to P.W.4 by way of re-examination. After the said question was put to P.W.4, the Applicant made an Application at Exhibit 16 seeking permision to cross-examine P.W.4. The said Application has been rejected by the learned Trial Judge by order dated 19th August, 2006.

2. The order dated 19th August, 2006 has been challenged in this Application. The learned Advocate

for the Applicant submitted that for the purposes of explaining ambiguity, the learned Trial Judge allowed the prosecution to ask a question by way of re-examination to P.W.4 and therefore, cross-examination ought to have permitted as a matter of right. He submitted that as cross-examination has not been permitted, prejudice has been caused to the Applicant. The learned A.P.P. supported the impugned order by pointing out that the Applicant has no right of further cross-examination and therefore, the learned Trial Judge was right in rejecting the Application.

3. I have considered the submissions. The learned Trial Judge has observed that there was an ambiguity in two answers given by P.W.4 which was required to be clarified. The impugned order suggests that the re-examination was permitted for the purposes of clarification as regards the two answers given by the P.W.4.

4. Considering the nature of the question which was permitted to be asked by way of re-examination and the answer given by the witness, I find that opportunity should be given to the Applicant to further cross-examine P.W.4. Hence, the order impugned

deserves to be quashed and set aside.

5. Hence, I pass the following order:

(i) The impugned order is quashed and set aside. The Applicant is permitted to cross-examine the P.W.4. The cross-examination will be restricted to the answer given by the witness in re-examination.

(ii) Writ to be sent immediately.

JUDGE